

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

ADDISON ALEXANDER,

Civil Action No. 1:13-cv-133

Plaintiff,

Weber, J.

Bowman, M.J

vs.

SGT. PAYNE, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION**

Plaintiff, an inmate at the Southern Ohio Correctional Facility, proceeding *pro se* and *in forma pauperis*, has filed a civil complaint pursuant to 42 U.S.C. § 1983. (Doc. 1). This matter is before the Court on Defendant Hobberson's motion to dismiss Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(5) and 12(b)(6). (Doc. 20). Also before the Court is the pending Show Cause Order and Plaintiff's response thereto. (Docs. 22, 24).

Defendants seek to dismiss defendant Hobberson as a Defendant in this case pursuant to Rules 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure. Notably, Defendants maintain that service was not perfected upon Defendant Hobberson in 120 days of the filing of the Complaint because there is no person at SOCF that bears this name. Plaintiff failed to respond to Defendants' motion to dismiss. Thereafter, the Court Ordered Plaintiff to Show Cause, in writing and within 20 days, why the motion to dismiss should not be granted. (Doc. 22).

Plaintiff timely responded to the Show Cause Order. (Doc. 24). In his response, Plaintiff asserts that this matter should not be dismissed, in its entirety, due to his misspelling of a Defendant's name. Plaintiff appears to assert that he meant to

name Officer Hubbard as a defendant.<sup>1</sup> Thus, Plaintiff concedes that Defendant Hobberson should be dismissed from this action.

In light of the foregoing, the undersigned finds that Defendant's motion to dismiss is well-taken. Thus, to the extent that Plaintiff's complaint asserts any claims against Defendant Hobberson, it is herein **RECOMMENDED** that such claims be dismissed and Defendant Hobberson be **TERMINATED** as a Defendant from this action.

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge

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<sup>1</sup> If Plaintiff wishes to name Officer Hubbard as a Defendant in this action, he may file a motion for leave to amend the complaint.

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report and Recommendation (“R&R”) within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).